

IN THE SENATE OF THE UNITED STATES.

JUNE 13, 1888.—Ordered to be printed.

Mr. SPOONER, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill S. 953.]

*The Committee on Claims, to whom was referred the bill (S. 953) authorizing the Secretary of the Treasury and the proper accounting officers to restate, settle, and pay to the owners of private dies the balance of commissions due them, respectfully submit the following report:*

A similar bill has been reported from the Committee on Claims of the House of Representatives at this session. The report, which is adopted by this committee, is as follows :

Prior to the year 1883 the Treasury Department withheld, from certain persons who furnished their own private dies for printing revenue stamps, a part of the commissions allowed by law. The Supreme Court of the United States had twice decided that the commissions so withheld were illegally withheld, first on appeal from a judgment rendered by the Court of Claims dismissing a petition on demurrer, and again on appeal from a judgment on the merits, in the same case.

After the first decision was made, the Secretary of the Treasury recommended to Congress the enactment of a statute providing for the payment of the commissions withheld, and transmitted to the House of Representatives a draught of such a measure. But, at the request of the Assistant Attorney-General, who had concluded to try the same case upon a traverse of the petition, he subsequently suspended his recommendation, to await the result of the second trial. The second trial having resulted in a second judgment, by the Supreme Court declaring the commissions to have been illegally withheld, the Secretary of the Treasury and the Commissioner of the Internal Revenue have both officially indicated their approval of legislation to authorize the payment of commissions so withheld.

"This case, then, is exceptional in character. It is not the case of an ordinary claim against the United States. The Supreme Court having pronounced the withholding of the commissions illegal, the Treasury Department, which withheld the commissions, finds itself without the means to refund them. There is no appropriation available for the purpose; and, besides, the commissions having been withheld by [the] predecessors of the present incumbents of the Treasury offices, the account can not now be reopened, under the rules of the Department, without authority of law. The Treasury Department therefore approves the enactment of a law to provide the means for the payment of the commissions."

"The question presented is not whether Congress shall empower the Treasury Department to investigate and settle an ordinary claim against the United States, but whether Congress will adopt the recommendation by the Treasury Department, of such legislation as shall enable that Department to pay specific commissions which have been unlawfully withheld, which commissions that Department finds itself unable to pay for want of the necessary appropriation, and by reason of the Department rule which interdicts the opening of old accounts by new officers."

The following is a statement, in detail, of the facts of the case. The internal-revenue acts allowed a commission of 10 per cent. in certain cases in favor of persons who furnished their own dies and purchased "at one time" stamps to the amount of "over \$500" (Rev. Stat., sec. 3425). But the internal-revenue officers, adopting an erroneous interpretation of these statutes, allowed and paid such commissions in stamps, which was equivalent to 9 per cent. only in such cases. One per cent. of the commis-

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sion allowed was thus withheld in violation of the provisions of the statutes. The pretext for this illegal action was that the commission of 10 per cent. which the statutes allowed on the purchase of stamps were payable, not in money by abatement from the face value of the stamps purchased, but in stamps at their face value.

The first decision of the Supreme Court disapproving of this construction of the statutes was made near the close of the term which commenced in October, 1881, in the case of *Swift Company v. The United States* (105 U. S., 691). Soon after this judgment of the Supreme Court was rendered the Secretary of the Treasury sent to the chairman of the Committee on Appropriations of the House of Representatives the following communication:

TREASURY DEPARTMENT, June 8, 1882.

SIR: I have the honor to inclose herewith the draught of a bill prepared by the Commissioner of Internal Revenue, authorizing the refunding of money to parties who have overpaid for their private die stamps, by reason of the former mode of computing and allowing their commission on purchase of said stamp, under section 3425 of the Revised Statutes, which mode, though in force about twenty years, has recently been decided by the Supreme Court of the United States to be erroneous, as you will see by the inclosed copy of the opinion of the court in the case of the *Swift & Courtney & Beecher Company, appellants, vs. The United States*. The Commissioner has changed the mode of computing and allowing such commissions in conformity with this decision, and it would seem to be just that the amounts which have been overpaid should be refunded, as proposed by the Commissioner. If the inclosed bill meets the approbation of the committee, I would respectfully suggest that it be incorporated in some appropriation bill, or other appropriate bill, now pending, to insure its passage at the present session.

Very respectfully,

CHAS. J. FOLGER,  
*Secretary.*

Hon. FRANK HISCOCK,  
*Chairman Committee on Appropriations, House of Representatives.*

The following is the draught which was inclosed in the foregoing communication of the Secretary of the Treasury:

"The Commissioner of Internal Revenue is hereby authorized, upon proof satisfactory to him, to refund, out of any moneys in the Treasury not otherwise appropriated, and pay back to those proprietors of articles named in Schedule C of the internal-revenue acts approved July 1, 1862: Schedule C of the internal-revenue act approved June 30, 1864, and Schedule A, following section 3437 of the Revised Statutes of the United States, or in either of them, or in any amendment thereof, who furnished their own die or designs for internal-revenue stamps to be used especially for their own proprietary articles, all moneys received from such proprietors for such stamps imprinted from such dies or designs, which under a misconstruction of the statutes relating to discounts and commissions were in excess of the amount required therefor by law. But no claim for the refunding of such moneys shall be allowed by said Commissioner unless the same shall have been presented to him within one year next after the passage of this act."

The Assistant Attorney-General decided to traverse the petition in the Court of Claims, and to try the cause upon its merits. At his request, the Secretary of the Treasury suspended the recommendation which he made in the foregoing communication until the ascertainment of the result of this second trial. After the second trial the case went again to the Supreme Court upon appeal, and in 1884 that court again disapproved the construction of the statutes which had been adopted by the revenue officers, and again held that 1 per centum of the commissions allowed by law had been illegally withheld. This case is *Swift Company v. United States* (111 U. S., 22).

Since the rendition of the last judgment of the Supreme Court the Secretary of the Treasury has transmitted to the chairman of the Committee on Claims of the House of Representatives the following communication:

TREASURY DEPARTMENT, March 23, 1886.

SIR: In reply to your letter of the 19th instant in regard to the bill (H. R. 241) to authorize payment of balance of commissions due to owners of private dies, I have the honor to say that the records of this Department disclose nothing which is not fully set forth in the documents inclosed by you (herewith returned) and in the two decisions of the Supreme Court of the United States (105 U. S. R., 691, and 111 U. S. R., 102). Accepting these decisions, I concur in the expression of the Commissioner of Internal Revenue (whose letter to me of the 22d instant is inclosed) that I see no objection to the passage of the bill.

Respectfully yours,

C. S. FAIRCHILD,  
*Acting Secretary.*

Hon. WM. M. SPRINGER,  
*Chairman Committee on Claims, House of Representatives.*

In the foregoing communication of the Secretary of the Treasury was inclosed the following letter from the Commissioner of Internal Revenue:

TREASURY DEPARTMENT, OFFICE OF INTERNAL REVENUE,  
Washington, March 22, 1886.

SIR: Referring to letter of Hon. William M. Springer, chairman of the Committee on Claims, House of Representatives, inclosing bill and other papers relative to claim of private die owners for the refund to them of certain commissions withheld by this office, which were referred, under date of the 20th instant, by Assistant Secretary Fairchild, with the request that I return the papers with report as to whether I would recommend the passage of the bill, I have to state that the records of this office show that certain commissions were withheld from owners of private dies for stamps purchased by them in excess of the amount which the Supreme Court of the United States in the case of the Swift & Courtney & Beecher Company decided should be allowed, and I know of no reason why the parties having such claims should not be re-imbursed the amount thus withheld. I therefore see no objection to the passage of the bill. The papers in the case are herewith returned.

I have the honor to be, very respectfully,

H. C. ROGERS,  
*Acting Commissioner*

Hon. DANIEL MANNING,  
*Secretary of the Treasury.*

On the 21st day of February, 1888, the Acting Commissioner of Internal Revenue transmitted to the committee the following communication:

TREASURY DEPARTMENT, OFFICE OF INTERNAL REVENUE,  
Washington, February 21, 1888.

SIR: I have the honor to acknowledge the receipt of your letter of the 16th instant, in which you ask that the Committee on Claims be furnished with an estimate of the amount that would be required to pay claims under the provisions of bill inclosed (H. R. 1268), "to authorize the Secretary of the Treasury and the proper accounting officers to restate, settle, and pay to the owners of private dies the balance of commissions due them."

You also ask for a statement of any facts in possession of this office touching the cause of the withholding of the commissions in the bill mentioned from the different claimants for the same, and state that any suggestions I may be pleased to make concerning the propriety of the proposed legislation will be duly appreciated.

In reply I state that the section 3425, Revised Statutes, provided for certain commissions to be paid to owners of private dies on purchase of stamps from their dies, as follows:

On amounts purchased at one time of not less than \$50 nor more than \$500, 5 per centum; and on amounts over \$500, 10 per centum on the whole amount purchased.

This office held that the commissions above referred to were payable in stamps, and they were so paid until the Supreme Court of the United States, in the case of the Swift and Courtney and Beecher Company, decided that the same should be allowed in money, and not in stamps.

The face value of stamps issued to owners of private dies up to May, 1882, was \$56,650,000.

On which there was collected.....	\$51,500,000
The amount which should have been collected under the decision of the Supreme Court is.....	50,985,000

Excess collected.....	515,000
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It is believed that judgments have been rendered in the Court of Claims in favor of a number of claimants for reimbursement of amounts paid in excess, and that some of the judgments have been paid; the amount outstanding, therefore, and for which an appropriation will be necessary in case of the passage of the bill, would be \$515,000, less the amount paid on account of such judgments.

This office has no record of the amount paid. The Supreme Court of the United States, in the case of the Swift and Courtney and Beecher Company, before referred to, decided that the amount withheld by this office should be allowed.

It would seem to be equitable and just that the amount withheld from others on account of such commissions should also be allowed.

I see no objection to the passage of the bill.

Respectfully,

E. HENDERSON,  
*Acting Commissioner.*

Hon. FRANK T. SHAW,  
*Member of the Committee on Claims,  
House of Representatives, Washington, D. C.*

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The amount required to pay these claims is \$350,142.59, as follows:

Excess collected by the Government, as shown by the Acting Commissioner's letter of February 21, 1888 .....	\$515,000.00
Less amount paid on judgments of the Court of Claims .....	164,857.41
Amount still due.....	350,142.59

The reason why these claims have not all been paid at the Treasury, since the final decision of the Supreme Court, is that, under the practice of the Treasury Department, the Comptroller can not, under the practice of the Department, allow an account which has been settled by a former Comptroller, even after a decision by the Supreme Court that such settlement was illegal.

On the 27th of October, 1885, the First Comptroller of the Treasury, in an official letter to the Commissioner of Internal Revenue, relating to a stamp account which had been presented for settlement, said:

"It appears from the records in this office that three of my predecessors have passed upon similar accounts, and one of them, Mr. Tayler, has passed upon the account of Swift and Courtney.

"Although the Supreme Court of the United States has decided that his statement was incorrect, as well as the statements of other Comptrollers on similar accounts, yet I am bound by their decisions. Should, however, a new case, involving the same principle, be presented, I should follow the opinion of the Supreme Court.

"I have heretofore held in a number of cases that the decision of a question or the statement of an account by any one of my predecessors, when he had jurisdiction on the subject-matter, could not be re-opened or restated, unless some mistake had been made by him in matters of fact arising from errors in calculation, or in cases of rejected claims material testimony is afterwards discovered and produced. No mistake in matters of fact arising from errors in calculation having been made by my predecessors in these accounts, or material testimony having been discovered or produced since their decisions, I can not re-open the same because of an error of judgment in regard to the law of the case, or their construction of the statutes."

The reason why the claimants have not all sued the United States in the Court of Claims is, that under the arrangement between the claimants and the Commissioner of Internal Revenue then in office, the case of the Swift and Courtney and Beecher Company was made a test case, and the others were to abide the result. But that case was pending six years, and when it was finally decided the new Commissioner declined to carry out the arrangements of his predecessor, and the statute of limitations then barred these cases in the Court of Claims. Section 3425, Revised Statutes, provides that—

"The proprietor of articles named in Schedule A, who furnished his own die or design for stamps to be used especially for his own proprietary articles, shall be allowed the following commissions: On amounts purchased at one time of not less than fifty dollars nor more than five hundred dollars, five per centum, and on amounts over five hundred dollars ten per centum on the whole amount purchased."

The Supreme Court of the United States decided unanimously that the money asked for by this bill was wrongfully taken from the owners of private dies. Three Secretaries of the Treasury, three Commissioners of Internal Revenue, and the present First Comptroller of the Treasury have all signified their approval of some measure that will enable the accounting officers of the Treasury to return this money to its legitimate owners. H. R. bill No. 1268 was drawn up at the Treasury, and meets the approval of the accounting officers, and your committee, having examined into the matter very carefully, after taking into consideration the amount involved, have unanimously decided to report back the bill and recommend its passage.